GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA

UNSTARRED QUESTION NO:5619
ANSWERED ON:24.04.2001
BAIL LAWS
SHIVAJI MANE

Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether there is any provision in the law to grant bail to the accused who fail to furnish bail sureties for release;

(b) if so, the details thereof;

(c) whether any proposal to amend relevant law to make provision for grant of bail in such circumstances;

(d) if so, the details thereof;

(e) whether it is a fact that due to rigidity of the present bail laws, large number of undertrials in jails are denied bail due to delay in concluding trials in criminal courts;

(f) if so, the steps proposed to be taken by the Government in this regard;
(g) whether the National Human Rights Commission conducted a study in regard to the misusing of powers and making unnecessary arrests by the Police personnel in the country; and
(h) if so, the action taken by the Government on the report of NHRC in this regard?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (I.D. SWAMI)

(a)&(b): Chapter XXXIII of the Code of Criminal Procedure, 1973 contains elaborate provisions relating to grant of bail. Section 441 of the Code provides that an accused has to furnish sureties before being released on bail. However, the Supreme Court in the case of Moti Ram Vs. State of Madhya Pradesh [AIR 1978 SC 1594] observed that `bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent`s rights, bail covers both release on one`s own bond, with or without sureties.

When sureties should be demanded and what sum should be insisted on are dependent on variables. Even so, poor men, young persons, infirm individual and women are weak categories, and courts should be liberal in releasing them on their own recognizance`.

(c)to(f): The Code of Criminal Procedure (Amendment) Bill, 1994, inter alia, proposes to amend section 436(1) of the Code of Criminal Procedure, 1973 to make a mandatory provision that if the arrested person is accused of a bailable offence and he is an indigent and cannot furnish surety, the Court shall release him on his execution of a bond without sureties.

It also proposes to insert a new section 436(A) in the Code of Criminal Procedure, 1973 to provide that where an undertrial prisoner, other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties. It is also proposed to provide that in no case will an undertrial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.

(g)&(h): According to the information furnished by the National Human Rights Commission, the Institute of Contemporary Studies at Bangalore undertook a study and submitted a project report on arrest. Based on the report, the Commission has circulated guideline regarding arrest to all the States with the request to translate it into their respective regional languages and make these available to all the police stations.